IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 729 OF 2007

Evergrowth Telecom Pvt.Limited. ... Petitioner.

V/s.

Union of India and others. ... Respondents.

Vikram Nankani with Vipin Jain and R.K. Shetty for the petitioner.

Ms.Manjula Rao with Kiran J. Kandpile i/b. H.P.Chaturvedi for the respondents.

CORAM : DR.S.RADHAKRISHNAN and V.C.DAGA, JJ.

DATED : 25th April 2007.

P.C. :

. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. Rule. Rule made returnable forthwith by consent of parties.

3. By this petition, the petitioner is challenging the order dated 20th February 2004 passed by the Additional Commissioner of Central Excise, Mumbai-IV. The main grievance of the petitioner is that before passing the said order the petitioner was not served with any show-cause-notice. In fact, perusal of the said order dated 20th February 2004

indicates that the intimation letters sent were returned back unserved from the postal authority. The petitioner is not having its office at the address shown in the show-cause-notice i.e. M/s.Evergrowth Telecom Ltd., H.O. House No.515 Phase-I, SAS-N, Mohali. The correct address of the petitioner is "Essar House, 17th Floor, 11, K.K.Marg, Mahalaxmi, Mumbai- 400 034" where the respondents have served the recovery notice. After receipt of the same in the month of January 2007, the petitioner has filed this petition.

4. In the aforesaid facts and circumstances, the impugned order is liable to be quashed and set aside on the limited ground that the show-cause-notice was not served upon the petitioner before passing impugned order. This was in violation of principles of natural justice. The petitioner, therefore, could not represent its case before the said authority. We, accordingly, quash and set aside the order dated 20th February, 2004. The matter is remitted back to the appropriate authority for adjudication afresh. All the issues raised in the present petition are expressly kept open. Rule is made absolute in terms of this order.

(V.C.DAGA, J.) **(DR.S.RADHAKRISHNAN, J.)**